

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.M., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.B. et al.,

Defendants and Appellants.

E072018

(Super.Ct.No. RIJ1600210)

OPINION

APPEAL from the Superior Court of Riverside County. Walter H. Kubelun,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and
Appellant K.B.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and
Appellant L.M.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

K.B. (mother) appeals from an order summarily denying her petition under Welfare and Institutions Code section 388, contending the juvenile court erred in finding she had not made a prima facie showing that she was entitled to additional family maintenance services or an additional six months of reunification services. Mother and L.M. (father) appeal from orders terminating their parental rights to J.M. Mother argues the juvenile court erred by finding the parent-child beneficial relationship exception under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i), did not apply.¹ We find no error and, therefore, affirm the orders.

I.

FACTS AND PROCEDURAL BACKGROUND

The Riverside County Department of Public Social Services (DPSS) received a referral alleging the general neglect of J.M. Mother and father had taken J.M. to the emergency room at 11:00 p.m. after father reported the child had fallen while jumping on a couch sometime between 9:00 and 9:30 p.m. Mother noticed the child's arm "was just hanging down," and he appeared to be in pain. J.M. was diagnosed with a fracture to his right elbow; the injury was old and already healing. Mother and father could not recall

¹ In his briefs, father presents no argument as to why the order terminating his parental rights should be reversed. He merely joins in the arguments made in mother's briefs and argues a reversal of the order terminating mother's parental rights will require reversal of the order terminating his rights. (See Cal. Rules of Court, rule 5.725(a)(1), (g); *In re A.L.* (2010) 190 Cal.App.4th 75, 79-80.)

how the child had received the injury. Both parents had previously been arrested for domestic violence, but mother minimized the incidents and denied current domestic violence in the home. Mother and father submitted to saliva drug tests. Mother's "results were negative for all substances and inconclusive for cocaine and opiates," and father's "results were inconclusive for all substances."

The social worker who responded to the hospital performed a body check on the child and noticed "looped marks on his right thigh." At first, mother and father claimed the marks came from the child playing with mother's makeup. Mother told the social worker that J.M.'s maternal grandmother and maternal aunt helped care for the child five or six days a week. Mother did not believe the child received his injuries while being cared for by his relatives. When the social worker expressed concern about the child's unexplained elbow fracture and the loop marks on his thigh, father then said that three or four months earlier he had hired a babysitter "off a website." He claimed the babysitter had caused the marks. Father also claimed to have made an anonymous report to the police about the babysitter, but he did not give the police his or the child's name because he did not want to be a "snitch."

A child abuse and neglect examination was positive for neglect and physical abuse. J.M. had old marks from physical abuse on his buttocks, thigh, and calf. The report indicated the multiple loop marks were "clearly inflicted." The social worker informed father of the results of the examination and asked for further corroboration about his claims that a babysitter had caused the loop marks. Father was unable to provide any documentation that he had hired a babysitter. Mother confirmed father's

claim that he had hired a babysitter to watch J.M. two or three times, and she said she had fired the babysitter because of the loop marks. Mother was unable to provide the social worker with additional information about the babysitter or the babysitter's full name.

The maternal aunt and maternal grandmother told the social worker they had not previously noticed any injuries to J.M.'s arm or the loop marks on his body. The child's paternal aunt, who had changed J.M.'s clothing on at least two occasions, also denied having any prior knowledge about the loop marks or the child's elbow fracture.

J.M. was detained and placed in protective custody. In a first amended petition filed with the juvenile court, DPSS alleged J.M. was a dependent child within the meaning of Welfare and Institutions Code section 300, subdivisions (a), (b)(1), and (e) (all further undesignated statutory references are to the Welfare and Institutions Code).

At the detention hearing, the juvenile court made a prime facie finding that J.M. was a dependent and ordered him detained out of the parents' care and custody.

In a report filed for the jurisdiction and disposition hearing, the social worker reported that mother had completed a urine test, which was negative for controlled substances. Father initially failed to comply with testing, and results of a urine test taken during the reporting period were still pending. Mother informed the social worker that she and father had one prior incident of domestic violence, which was primarily verbal in nature, and admitted she had thrown a remote control at father but missed. Father denied any domestic violence in the relationship. Mother and father participated in twice weekly supervised visits with the child. Both parents interacted well with the child, and no

concerns were reported. J.M. cried when the visits were concluded, indicating he missed his parents.

An addendum report indicated mother had tested negative for drugs but failed to appear for one random test. Father tested positive for marijuana use. Both parents had been referred for counseling services, and both had completed two individual counseling sessions. Both parents had also enrolled in parenting classes.

In a second amended petition, DPSS deleted all allegations of serious physical harm (§ 300, subd. (a)), and again alleged J.M. was a dependent child within the meaning of section 300, subdivisions (b)(1) and (e). The juvenile court sustained the allegations in the second amended petition and found J.M. to be a dependent child. The court ordered that the child remain detained out of the parents' home and in the custody of DPSS, and it adopted the social worker's recommendations and case plan.

In a status review report, DPSS recommended the juvenile court order J.M. returned to mother with family maintenance services, including the conditions father not live in the home and the child receive licensed daycare services. DPSS recommended father continue to receive reunification services and supervised visitation. The social worker also reported mother and father had been living in a trailer and, although the trailer was small and somewhat cluttered, it was suitable for the child's needs. Mother informed the social worker she had been suffering from an eating disorder. The disorder made it difficult for her to gain weight, and she used marijuana to control the disorder. During the reporting period, mother failed to appear for three random drug tests; however, she had tested negative twice and positive for marijuana twice. The social

worker had not received the results from three additional tests. Mother continued to deny any current domestic violence in her relationship with father.

Father reported he suffered from a back injury received in an automobile accident, and he used marijuana to treat the pain. Father tested negative during two random drug tests and positive for marijuana twice. The social worker had not received the results from six additional random drug tests. Father denied any domestic violence in the past or present.

J.M. was placed in his paternal aunt's home. The aunt reported the child "gets upset and 'mad' eas[ily] and can be 'grumpy,'" says "no" a lot, and had been physically aggressive with mother during visitation. But, the child was friendly and social while playing with similarly aged children. The social worker reported the child was bonded with his aunt and had adjusted well to his placement.

Mother had completed parenting courses and domestic violence counseling during the reporting period. Father reported he had completed parenting classes and individual anger management counseling, but the social worker had not been able to confirm completion of the parenting classes. The social worker opined both parents had made significant progress on their case plans. Both parents had regular and consistent visits with J.M. Mother was very patient with the child, soft spoken, and loving with him, and usually brought home-cooked meals to the visits. Father mostly played with and read to the child during the visits. During two of the visits, however, father was observed using inappropriate discipline. When redirected, father reported he would refrain from using physical discipline in the future.

At the scheduled six-month status review hearing, the juvenile court continued the hearing, ordered mother to have unsupervised visits with J.M. on the condition she not use marijuana during the visits, and indicated it would authorize DPSS to return the child to her care if it was verified that father no longer resided in the home.

In an addendum report, the social worker reported father had moved out of the trailer and none of his belongings were observed in the home. The social worker continued to report that mother had made progress on her case plan and continued to recommend the court return the child to mother under family maintenance, on the condition she tested negative for drug use or tested with an acceptable marijuana level.

The juvenile court again continued the six-month status review hearing, ordered the child be returned to mother for an extended visit on the condition father not reside in the home, and ordered father to continue receiving supervised visits.

In an additional addendum report, the social worker reported father had consistent and positive supervised visits with the child, and he did not use inappropriate discipline as before. Father had enrolled in individual counseling and participated in one session. He was scheduled to participate in additional sessions to address anger management. The social worker opined father needed to address anger management issues and an outstanding warrant before DPSS would consider liberalizing his visitation.

At the contested six-month status review hearing, the juvenile court found mother had made satisfactory and substantial progress in alleviating the reasons for the detention and ordered J.M. returned to her care under family maintenance. The court found father had made adequate but incomplete progress in alleviating the reasons for the detention,

ordered father to continue receiving reunification services and supervised visitation, and authorized liberalized visits for father, including overnight and weekend visits, if he complied with his case plan.

In a report filed for a family maintenance review hearing, the social worker reported mother had been evicted from her home when she failed to pay the rent. Mother was unemployed but actively seeking employment, and had been allowed to temporarily move into the maternal grandmother's home for no more than 30 days. She was receiving some cash aid and food stamps, but at that time she did not qualify for housing assistance. Mother reported she had gained 10 pounds and was no longer using marijuana to treat her eating disorder. Father continued to use marijuana to treat his back pain. Mother said she was no longer in a relationship with father. However, father told the social worker he still had an "on again, off again" relationship with mother, and he expected to reunite with her in the future.

Father attended individual counseling to address anger management, but he was discharged from the program for nonattendance. Father informed the social worker he had completed eight out of 10 sessions of a parenting class but had not been able to complete the course because of his work schedule. Father had visited J.M. six times during the reporting period but stopped visiting because of his work schedule, and the visits were positive and without incident. The social worker opined father's motivation to complete his case plan had decreased during the reporting period. The social worker also reported J.M.'s behavior had improved.

At a 12-month status review hearing, the juvenile court continued family maintenance as to mother, and reunification services and supervised visits as to father.

The following month, DPSS filed a supplemental petition pursuant to section 387 to remove J.M. from mother's care. The social worker recommended the juvenile court find the child's presence in mother's home was contrary to his well-being, order mother to receive supervised visits at least once a week, and order visitation terminated if mother was found to possess or be under the influence of drugs or alcohol. The social worker had called mother to schedule an in-home visit, but mother did not answer her calls. When the social worker finally met with mother in person, mother said she had not been answering her calls because father had been harassing and stalking her. But, father told the social worker it was mother who had been stalking him. According to father, mother was jealous of his new girlfriend and had been constantly calling him and sending him inappropriate text messages. When the social worker contacted mother to remind her that father had a scheduled visit with the child, mother said she was out of town and denied that she had spoken to father. Mother did not respond to the social worker's calls or text messages for the next two weeks.

Father told the social worker mother had been kicked out of the maternal grandmother's residence because of "drama," and mother was now residing with a 17-year old male. According to father, he called the house to check on J.M., and the 17-year-old threatened to kill father. The social worker called and texted mother to inform her to go to the DPSS office that day, but mother did not respond. The next day, father went to the DPSS office and told the social worker that three days earlier mother and two

other females had gone to father's girlfriend's house and started a fight, during which mother tried to stab the girlfriend's sister with a knife. Police responded, but they did not recover a knife. According to father, the next day, mother called father's girlfriend and invited her to come over to talk. When father's girlfriend and her friend went to mother's residence, mother came outside with a baseball bat, and mother's sister came out armed with a knife. According to father, mother hit his girlfriend's friend in the head with the bat.

The social worker spoke to a man who witnessed an incident at the maternal grandmother's house, the day after the above altercation. The witness said he saw five women hitting mother with baseball bats. According to the witness, the women would have killed mother if he had not intervened. A neighbor called the police and an ambulance was called to the scene, but mother refused to be taken to the hospital. The witness said that J.M. was inside the residence watching television during the assault, but the witness did not believe the child saw what had happened. Mother then took J.M. and left the residence. The witness also told the social worker that on another occasion, father had gone to maternal grandmother's house and asked to see J.M. When maternal grandmother refused to let him in, he lifted his shirt and revealed a gun in his waistband. Maternal grandmother threatened to call the police, and father left. Mother did not respond to the social worker's calls or text messages and, as of the date of the section 387 report, J.M.'s whereabouts were unknown.

The social worker opined there was a substantial danger to the child's physical health, the child was suffering severe emotional damage in mother's care, mother had not

benefited from the reunification and family maintenance services she had received, and the child needed to be removed from mother's care. The social worker recommended the juvenile court order mother to complete an anger management course, participate in "SafeCare," an in-home parent-training curriculum and random drug tests, and order both parents to have supervised visits with J.M. at least once a week.

The juvenile court made a prima facie finding that J.M. was a dependent child as alleged in the supplemental petition and ordered J.M. removed from mother's care. The court then ordered mother to test for drugs and alcohol, attend counseling, and have supervised visits twice a week. The court also authorized DPSS to terminate the visits if mother was under the influence of alcohol or drugs.

In a status review report, DPSS recommended mother continue to receive reunification services but recommended the juvenile court terminate services to father and reduce his supervised visits to twice a month. J.M. had been placed in a foster home. The child was healthy and developing well, but the social worker reported the child might need to participate in play therapy to address the emotional effects of his witnessing the violent altercation at the maternal grandmother's home.

Mother had been referred to a family reunification program, and she was awaiting an interview for a housing voucher program, commonly known as "Section 8." Mother was working part time at a fast food restaurant. Mother reported she was in a healthy relationship at the time and denied experiencing any additional domestic violence. Mother had regular weekly visits with J.M. after the child was removed from her care the second time, and the visits went well.

Father was living with his girlfriend and working part time in landscaping. He continued to use marijuana for his back pain. Father reported no domestic violence in his new relationship. Scheduling father's weekly supervised visits was problematic based on miscommunication between father and the foster parent, but the child enjoyed the visits and father played with and read to the child. Because father had not completed his services or made significant progress in his case plan, the social worker recommended those services be terminated.

In a jurisdiction and disposition report filed for the supplemental petition, the social worker recommended the juvenile court (1) order mother to have twice weekly visits for two hours, (2) authorize DPSS to liberalize and increase the visits as appropriate, and (3) authorize DPSS to terminate the visits if mother was found to possess, consume, or be under the influence of drugs or alcohol.

Mother had failed to respond to numerous calls from the social worker during the reporting period. When she finally met with the social for an interview, mother admitted she had absconded with the child but explained she was fleeing father. Mother also admitted she had engaged in mutual combat with father's girlfriend and others, but claimed she acted in self-defense. Mother said her new boyfriend was supportive and again denied any current domestic violence. Mother also denied any current marijuana use.

Mother told the social worker she wanted J.M. returned to her care or, in the alternative, the child should be placed with the maternal grandmother. Mother had not enrolled in counseling services, had not made herself available to schedule appointments

with service providers, and had not participated in her agreed-upon case plan components of anger management and parenting courses, and services for victims of domestic violence. The social worker opined during the reporting period that mother had made minimal progress toward alleviating the causes of the child's detention.

Father also failed to respond to numerous calls from the social worker during the reporting period. When interviewed, father told the social worker he was not present during the physical altercations involving mother and said he had not had any further contact with mother. Father denied he had possessed a weapon.

J.M. was developing well and was comfortable in his foster home. The child reported that he had fun during the visits with his parents but was sad when they were over. The child's foster mother denied the child had any regressive behaviors but did report he would cry when the visits concluded and apparently missed his parents.

The juvenile court continued the jurisdiction hearing and ordered DPSS to refer mother to anger management courses forthwith.

In an addendum report, the social worker now recommended the juvenile court terminate mother's reunification services because the normal 18-month limit for services had been reached and order both parents to have supervised visits once a month. Mother had been referred to an anger management course, but the referral was terminated because mother could not be reached to schedule an appointment. Mother scheduled two appointments for a second referral but twice failed to appear. Mother also failed to appear for a scheduled appointment for individual counseling and failed to participate in

parenting classes as well. And, her emergency housing application had been denied because she failed to complete the application process.

The social worker reported mother had been compliant with SafeCare; however, the SafeCare nurse reported mother had a disagreement with the maternal grandmother, and mother no longer wanted J.M. placed with the maternal grandmother. The maternal grandmother informed DPSS that mother was temporarily living in her home and was using marijuana. An assessment of the maternal grandmother for relative placement was pending. However, an emergency placement was not possible because the maternal grandmother's husband had an extensive criminal history, and a criminal exception would not be provided.

The social worker opined mother had not been compliant with her court ordered services and recommended the juvenile court terminate services and set a hearing under section 366.26 for selection of a permanent plan for J.M.

The juvenile court again continued the jurisdiction hearing, directed DPSS to assess the paternal grandmother for placement, and directed the social worker to file an addendum report addressing possible relative placement.

In an additional addendum report, the social worker recommended the juvenile court order a permanent plan living arrangement for J.M. with the goal of adoption. A home evaluation of the paternal grandmother could not be completed because attempts to reach her had been unsuccessful. The social worker reported that the maternal aunt was also in the process of being evaluated for an emergency placement. The social worker reported that father had been discharged from SafeCare for noncompliance. He was also

at risk of having his individual counseling services cancelled because he had missed two consecutive sessions and missing a third session would most likely result in termination. In addition, the therapist said father avoided discussing the subject of domestic violence during his sessions and avoided having “deep” conversations. The therapist “felt like [father] was telling her what she wanted to hear.” Mother told the social worker that she had tried unsuccessfully to contact the service provider to schedule an appointment for individual counseling and anger management classes, but the social worker could not verify those claims and reported mother was not participating in her services. Both parents continued to visit J.M. regularly and had resumed their friendship.

At the continued jurisdiction hearing, counsel for DPSS informed the court the social worker had performed an inspection of the maternal aunt’s home, and she had been approved for emergency relative placement. Assessment of the paternal grandmother was still pending. Counsel for mother argued mother had completed the services that had been provided to her, but the social worker had failed in some respects to provide mother with reasonable services. Because a permanent plan for the child was not yet in place, counsel asked that the juvenile court extend services to mother to the 24-month limit or, in the alternative, leave visitation in place and place J.M. with his maternal grandmother. Counsel for J.M. and DPSS asked that the juvenile court follow the social worker’s recommendation and terminate reunification services to father, not extend services to mother, and set a hearing for selection of a permanent plan.

The juvenile court sustained the supplemental petition, ordered J.M. to remain detained out of mother’s care, found mother had made only minimal progress during the

most recent review period, and declined to extend her services because it was not reasonably probable the child would be reunited with mother if she were provided with an additional six months of reunification services. However, the court authorized DPSS to make additional referrals for services in case mother wished to petition the court for additional services. The court found father had only made minimal progress and terminated reunification services to him. The court left in place the prior visitation orders and set a hearing under section 366.3 for postpermanency.

In a status report for the postpermanency hearing, the social worker reported J.M. had been placed with his maternal aunt. The child was developing well and attending daycare where he was socially interactive and demonstrated appropriate behaviors. The child had adjusted well and was thriving in his placement, and he was bonded with his maternal aunt. The maternal aunt expressed the desire to adopt the child, but she was concerned for her family's safety because of father's behavior.

Mother was back in hiding because father had physically assaulted her, threatened to kill her, and stole her purse. Father had been arrested on suspicion of attempted murder, was being held on \$1 million bail, and mother had obtained a restraining order against father. Mother obtained referrals, had reengaged in reunification services, and intended to petition the juvenile court for an order reinstating those services. She had been working part time at a fast food restaurant but was fired when father showed up at her workplace and made a scene. Mother had been visiting regularly with J.M. for two hours, once a week and usually brought food or snacks. The visits had been going well,

the child was always excited to visit with mother, and the child expressed a desire to return to mother's home. Prior to his arrest, father's visits were inconsistent.

The social worker opined it was not reasonably probable J.M. would be reunified with mother. Although mother had recently reengaged in services, she had not completed her services. Mother's housing application had been denied because she failed to timely submit corrections. Mother was unemployed and lacked suitable housing for the child. Therefore, the social worker recommended the juvenile court set a hearing under section 366.26 for selection of a permanent plan.

At the section 366.3 hearing, counsel for mother informed the juvenile court that mother was "back on track" with her services and planned on filing a petition under section 388 for additional services. Father's counsel informed the court that father was currently incarcerated, and he did not object to the court setting a hearing under section 366.26. The court set a permanency planning hearing, left in place the current visitation orders, and directed DPSS to coordinate with J.M.'s caretaker visitation in a suitable location other than the department's offices.

In a report for the section 366.26 hearing, the social worker recommended the court terminate father's visits, reduce mother's supervised visits to once a month, and continue the hearing for 120 days for the completion of a preliminary adoption assessment. J.M. was thriving in his maternal aunt's home and was bonded with the family. The child was also bonded with the maternal grandmother, who babysat him once a week. The maternal grandmother removed herself from consideration for placement once the maternal aunt was approved for an emergency placement. Mother

had been visiting regularly on Fridays but then missed three consecutive visits. The child was bonded with mother and enjoyed the visits. He acted out when mother missed a visit or had to reschedule. The child was sad, angry, or quiet after visits and expressed a desire to live with mother. Although the juvenile court had authorized DPSS to provide father with visits in jail, the social worker opined such visits would not be in the child's best interest and would place his emotional well-being at risk. The social worker reported that an adoption assessment of the maternal aunt was pending and opined it was highly likely she would be found suitable.

The juvenile court continued the section 366.26 hearing to allow for completion of the adoption assessment. The court terminated visitation to father.

In a postpermanency status review report, the social worker recommended the juvenile court find that J.M. was adoptable and adoption was the most appropriate permanent plan. Mother was living with the maternal grandmother again, working part time, and transitioning to full time. J.M. continued to thrive in his maternal aunt's home, and the maternal aunt expressed a willingness to adopt the child. Mother had regular visits with the child once a month during the reporting period, but did not have any visits one month because it conflicted with her work schedule. The social worker opined the prognosis of reunification of the child with mother was poor because mother had not completed her reunification services. Mother had, however, been provided with additional referrals, and she had reengaged in them with the intention of petitioning the juvenile court for additional services. The social worker opined the likelihood of the child being adopted by the maternal aunt was high.

In an addendum report, the social worker reported J.M. was in transitional kindergarten and found to have no speech or learning delays. The preliminary adoption assessment concluded the child was adoptable, and the maternal aunt was a suitable candidate for adoption.

In a petition filed pursuant to section 388, mother requested the juvenile court vacate the section 366.26 hearing and order mother to receive family maintenance services or an additional six months of family reunification services. Mother argued changed circumstances supported the requested order because she had completed the parenting and counseling components of her case plan, and because she now had stable housing and employment to provide for J.M.'s needs. Mother argued the requested order would be in the child's best interest because she had worked hard to complete her case plan and eliminate the reasons for the most recent detention; she took on a parental role during the visits and provided him with a stable home environment; and it was in the child's best interest to be with his mother because they had a significant bond, and she was the best person to provide for and protect him.

In an additional addendum report, the social worker reported mother had been having regular visits with J.M., but an argument between mother and the maternal grandmother, and mother's failure to respond to the social worker's communications, had resulted in mother not attending some of the visits.

At the section 366.26 hearing, counsel for DPSS argued the juvenile court should summarily deny mother's section 388 petition because she failed to present evidence that she had completed her case plan and, therefore, she had failed to demonstrate changed

circumstances warranting relief. The only component she had completed was a parenting class. Minor's counsel also requested the court summarily deny the petition and argued additional services to mother would not be in J.M.'s best interest. The child had been in three placements over a lengthy period but was finally in a stable home. The child was bonded with the maternal aunt's family and deserved permanency and stability. Mother's attorney argued mother had made a threshold showing to warrant a hearing and asked for the court to take testimony from mother about the extent of her efforts at completing services. In the alternative, mother asked the court to consider legal guardianship instead of termination of parental rights. Father joined in mother's requests and argued termination of parental rights would be detrimental to J.M. because of the significant bond between the child and the parents.

The juvenile court summarily denied mother's petition. The court noted mother had made significant progress on her case plan earlier in the case, but she failed to take advantage of the opportunity she was afforded when the child was returned to her under family maintenance. And, after the child had been removed from her care the second time, mother failed to use alternatives to violence, to complete her reunification services, or to complete drug tests. With respect to her efforts since termination of services, the court found there was no proof that mother had completed an anger management course and, in any event, at best she had only completed 50 percent of the components of her case plan. And, even if the court were to conclude mother had made a showing of changed circumstances that would justify six months of additional service beyond the normal 18-month maximum that she had already received, additional services would not

be in the child's best interest. "He is stable, he is bonded, and it is in his best interest to remain in that household and not disrupt his life for a fourth time."

The juvenile court also concluded the most appropriate permanent plan for J.M. was adoption; found it was likely that he would be adopted; found that mother and father had been provided with reasonable family reunification services yet had failed to alleviate the reasons for the detention; terminated mother's and father's parental rights; and found termination of parental rights would not be detrimental to the child.

Mother and father both timely appealed.

II.

DISCUSSION

A. *The Juvenile Court Did Not Abuse Its Discretion by Summarily Denying Mother's Section 388 Petition Without Conducting an Evidentiary Hearing.*

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. [Citation.] Generally, the petitioner must show by a preponderance of the evidence that the child's welfare requires the modification sought." (*In re A.A.* (2012) 203 Cal.App.4th 597, 611-612.)

"A prima facie case is made [for a hearing under section 388] if the allegations [in the petition] demonstrate that these two elements are supported by probable cause.

[Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child’s best interests.’ [Citation.] In determining whether the petition makes the required showing, the court may consider the entire factual and procedural history of the case.” (*In re K.L.* (2016) 248 Cal.App.4th 52, 61-62.)

“We review a juvenile court’s decision to deny a section 388 petition without an evidentiary hearing for abuse of discretion.” (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 62.) The appropriate test for abuse of discretion is ““““whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”””” (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1117.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

“It is true a parent and a child share a fundamental interest in reuniting up to the point at which reunification efforts cease. [Citation.] However, the interests of the parent and the child have diverged by the point of a [section 366.26] hearing to select and implement a child’s permanent plan. [Citation.] ‘[C]hildren have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the

child.’ [Citation.] Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker.” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)²

“A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able

² In her brief, mother contends reviewing courts evaluate a section 388 petition according to the nonexhaustive list of factors set forth in *In re Kimberly F.* (1997) 56 Cal.App.4th 519: “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*Id.* at p. 532.)

The very same court that decided *In re Kimberly F.* has since rejected application of those factors when the juvenile court has terminated services and set a section 366.26 hearing for selection of a permanent plan. “[W]e decline to apply the *Kimberly F.* factors if for no other reason than they do not take into account the Supreme Court’s analysis in *Stephanie M.*, applicable after reunification efforts have been terminated. As stated by one treatise, ‘In such circumstances, the approach of the court in the case of . . . *Kimberly F.* . . . may not be appropriate since it fails to give full consideration to this shift in focus.’ [Citation.] We instead follow the direction of our Supreme Court, holding that after reunification services have terminated, a parent’s petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child’s need for permanency and stability.” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 527.) We too decline to apply the *Kimberly F.* factors in this case.

to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.] "[C]hildhood does not wait for the parent to become adequate." (In re Mary G. (2007) 151 Cal.App.4th 184, 206.)

Mother contends she made a prima facie showing of changed circumstances because she had completed a parenting class and engaged in individual counseling. According to mother, those efforts showed she adequately "addressed the issues which gave rise to the supplemental petitions." We are not persuaded. The primary reasons for J.M.'s removal from mother's care the second time was mother's inappropriate communications with and threats to father, and her engaging in mutual combat with bats and knives on two occasions with father's girlfriend and other women. As the juvenile court noted when it denied mother's petition, mother failed to complete the anger management class to which she had been referred *to alleviate the reasons for the second detention*. Mother's completion of parenting classes and individual counseling after the termination of services, while laudable, merely demonstrated mother was in the process of changing her circumstances. Under the facts of this case, mother had to demonstrate she had addressed her anger and proclivity to violence to demonstrate a changed circumstance. Because she did not do so, the juvenile court properly found no change in circumstance.

Moreover, mother did not demonstrate that providing her with additional family maintenance services or an additional six months of reunification services would be in J.M.'s best interest. The record supports mother's claim that she and the child shared a significant bond and attachment and, on the whole, mother maintained that bond through

consistent visitation. But, she failed to address in the juvenile court or on appeal specifically how returning J.M. to her care under family maintenance or granting her an additional six months of reunification services would advance the child's need for permanency and stability.

Mother had received reunification services for 18 months, yet, despite having the child returned to her under family maintenance, she had failed to reunify with J.M. Except for the brief period during which J.M. was in mother's care under family maintenance, J.M. had spent most of his life in foster care or in the care of his maternal aunt. The record amply demonstrated the child was extremely well adjusted in the maternal aunt's home, was very bonded with the family, and the family provided him a safe, stable, and loving home. Mother's burden was high—she had to explain how delaying a permanent plan for J.M. by returning the child to her care under family maintenance or giving her an additional six months of services and delaying further a permanent plan of adoption would actually benefit J.M. On this record, we simply cannot conclude mother met that burden. Therefore, we conclude the juvenile court did not err by summarily denying mother's petition.

B. The Juvenile Court Did Not Err by Finding the Beneficial Parent-Child Relationship Exception to Termination of Parental Rights Did Not Apply.

“Section 366.26 provides that if parents have failed to reunify with an adoptable child, the juvenile court must terminate their parental rights and select adoption as the permanent plan for the child. The juvenile court may choose a different permanent plan only if it ‘finds a compelling reason for determining that termination [of parental rights]

would be detrimental to the child [because]: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).)” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

As the parties note in their briefs, the appellate courts are divided on the appropriate standard of review of a juvenile court’s conclusion that the beneficial parent-child relationship exception does not apply. Some courts have applied the abuse of discretion standard while others have applied the substantial evidence test. (See *In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) Recently, some courts have taken a middle approach, applying the substantial evidence test to the juvenile court’s factual finding of whether there exists a beneficial parent-child relationship, and applying the abuse of discretion standard to the juvenile court’s ““quintessentially” discretionary decision” that termination of parental rights will not be detrimental to the child. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622, quoting *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.) We need not decide which approach is correct because under either standard, the juvenile court did not err.

In re Autumn H. (1994) 27 Cal.App.4th 567 is the seminal case regarding exceptions to the preference for adoption. There, the court held that parent-child relationships that can prevent termination of parental rights are ones that promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in

a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Id.* at p. 575.)

"The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.)

Adoption cannot be thwarted simply because a child would derive some benefit from continuing the parent-child relationship, and adoption should be ordered when the court finds that the relationship maintained through visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The juvenile court may reject the parent's claim simply by finding that the relationship maintained during the visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. To apply the exception, the court must find compelling reasons to apply the exception. Only in an extraordinary case will the preservation of parental rights prevail over the Legislature's preference for adoption. (*Ibid.*)

Mother contends the juvenile court erred by not applying the parent-child beneficial relationship exception. According to mother, (1) it is undisputed that she maintained regular visitation with J.M., (2) termination of parental rights and severing of the strong bond between mother and the child would greatly harm the child, and (3) the harm to the child outweighed the potential benefit he would receive from adoption. Mother did not argue these points before the juvenile court, focusing her argument entirely on her section 388 petition. Instead, it was father's counsel who argued the juvenile court should find the exception applicable because of the strong bond between mother and J.M. But, we need not decide whether mother forfeited her claim, and we find no error.

As counsel for DPSS points out in its brief, mother's visitation immediately prior to the section 366.26 hearing was not as regular and consistent as mother would have us believe. Even if we were to agree with mother that, overall, she consistently visited with J.M. throughout the life of this case and maintained her bond with the child, we would still conclude the juvenile court did not err. The record amply supports the conclusion that J.M. was bonded with mother. Mother was loving and attentive with the child during the visits, brought him food and snacks, and the child was sad at the end of the visits. But, except for the brief period during which J.M. was in mother's care under family maintenance, the child spent most of his young life in the care of others. And, for the year before the section 366.26, he had been cared for by his maternal aunt. The record overwhelmingly demonstrates the child thrived in his foster home; he was deeply bonded to his maternal aunt and her biological children (the child's first cousins); and the

maternal aunt's family provided the child with the safety and stability he sorely lacked while in mother's care.

Considering J.M.'s tender age, the fact the child had lived in his maternal aunt's home for so long, and the demonstrated strength of the bond between the child and his foster family, the juvenile court did not err by concluding the bond between mother and the child was not so substantial that severing it would be detrimental. The benefits the child might derive from a continued parental relationship with mother, whose long-term ability to safely provide for the child had not yet been proven, did not outweigh the benefits he would derive from a stable and secure adoptive family. The record supports the trial court's findings, and we find no abuse of discretion.

III.

DISPOSITION

The orders denying mother's section 388 petition and terminating mother's and father's parental rights are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.